

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF KANSAS**

IN RE: ANNAMARIE WILKINS,

Case No. 01-42217-13

Debtor.

**MEMORANDUM AND ORDER DENYING MOTION TO RECONSIDER,
EXCEPT THAT PART SEEKING ADDITIONAL DISCOVERY**

This matter is before the Court on the Trustee's Motion to Reconsider the Court's order denying his Motion to Dismiss (Doc. No. 21), which was based on the Trustee's allegation that Debtor was subjecting her income to potential gambling losses. The Court heard evidence on this matter on October 23, 2003, and found that the Trustee had not met his burden to prove, by clear and convincing evidence, that Debtor was, in fact, continuing to gamble. On that basis, the Court denied the Motion to Dismiss (Doc. No. 57).

The legal standard for granting a motion for reconsideration is narrow. "A motion for reconsideration should be granted only to correct manifest errors of law or to present newly discovered evidence." *Adams v. Reliance Standard Life Ins. Co.*, 225 F.3d 1179, n. 5 (10th Cir. 2000) (internal quotations omitted). "Such motions are not appropriate if the movant only wants the Court to revisit issues already addressed or to hear new arguments or supporting facts that could have been presented originally." *Id.*

In order to dismiss a debtor's case for gambling, this Court wants to have little doubt that the debtor is, in fact, continuing to gamble. Because of the late, and unanticipated, defense raised by Debtor to the Motion to Dismiss, the Court did not have the level of confidence that it wishes to have in order to dismiss a case for ongoing gambling. That is because the dismissal of this case could obviously have severe

ramifications for Debtor and her family. In addition, this Court, due to the original defense taken by her lawyer that gambling while in a Chapter 13 was perfectly acceptable, was concerned that perhaps Debtor did not completely understand the seriousness of a decision to continue to gamble. Accordingly, although the Court was concerned about Debtor's credibility, it wished to err, in a close case, on the side of allowing this Debtor the opportunity to stay in a Chapter 13 proceeding. The Court thus used the hearing, and its oral decision, to convey to Debtor that gambling was unacceptable, in case there was any confusion caused by her attorney's original legal position.

Because the Court believed that the conduct of Debtor, during the discovery phase of this matter, including her pleadings and arguments of counsel, may have unfairly altered the Trustee's approach to discovery and evidence offered, the Court specifically reserved the Trustee's right to bring another similar motion, or to bring evidence back to the Court that would show that Debtor had not testified truthfully when she testified that it was her Aunt Betty, not her, who had withdrawn money from the ATM located in a local casino. Accordingly, although the Court will deny the Motion to Reconsider, because the Court believes its decision, under all the circumstances, was legally and equitably the correct one, the Court will grant, and frankly has already partly granted, the Trustee's alternate prayer for relief.

The Trustee has requested, as alternate relief, that he be allowed to conduct additional discovery in this matter, including attempts to obtain surveillance information for the pertinent ATM where the withdrawals were made, and to conduct a 2004 exam of Debtor's aunt. He has also requested that Debtor be required to provide her Aunt Betty's full name, home telephone number, residence address and place of employment. The Court will grant so much of this Motion that seeks approval to engage in additional discovery and seeks this additional information from the Debtor to assist the Trustee in locating the Aunt for further inquiry. The Debtor shall, within fifteen (15) days of the date of this Order, or by December 18,

2003, provide that information to the Trustee.

IT IS, THEREFORE, BY THIS COURT ORDERED that the Defendant's Motion to Reconsider the Court's Memorandum and Order dated October 24, 2003 (Doc. 57) is denied, except for the alternate relief requested therein, as set forth below.

IT IS FURTHER ORDERED that that part of the Trustee's Motion for Reconsideration that seeks additional discovery going to the issue of Debtor's alleged gaming, is granted. No later than December 18, 2003, Debtor shall provide to the Trustee the information set out above.

IT IS SO ORDERED this 3rd day of December, 2003.

JANICE MILLER KARLIN, BANKRUPTCY JUDGE
UNITED STATES BANKRUPTCY COURT
DISTRICT OF KANSAS

CERTIFICATE OF MAILING

The undersigned certifies that copies of the MEMORANDUM AND ORDER DENYING MOTION TO RECONSIDER EXCEPT THAT PART SEEKING ADDITIONAL DISCOVERY was deposited in the United States mail, prepaid on this 3rd day of December, 2003, to the following:

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U.S. Bankruptcy Judge